

## **GRANT OF EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, I/WE \_\_\_\_\_ and \_\_\_\_\_, the "Grantor(s)", as a charitable donation, do hereby GRANT to the Inhabitants of the Town of Nantucket (the "Town"), a body politic of the Commonwealth of Massachusetts, having offices at 16 Broad Street, Nantucket, Massachusetts 02554, by and through its Board of Selectmen, the "Grantee," with QUITCLAIM COVENANTS, the following rights, title and interests:

1. A perpetual easement coextensive with and limited to the Easement Area of Grantors' Lands. The terms "Easement Area" and "Grantors' Land," as well as other terms used in this Grant of Easement, are defined below in Paragraph 2. The scope of the affirmative perpetual easement herein granted is more fully defined, limited, and subject to the conditions and covenants set forth in the following paragraphs.

2. Definitions for the purposes of this Grant of Easement:

"Grantors' Land" shall mean that land situated in the Town of Nantucket, County of Nantucket, Commonwealth of Massachusetts, being more fully described in a deed from \_\_\_\_\_ and \_\_\_\_\_ to Grantor(s) dated \_\_\_\_\_, \_\_\_\_\_ and duly recorded at the Nantucket County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_; said lands being hereby made subject to and over which the easement created hereby is granted are also known as and shown as Parcel \_\_\_\_\_ on Town of Nantucket Assessor's Map \_\_\_\_\_, and which is also shown as Lot(s) \_\_\_\_\_, on a Plan of Land entitled "\_\_\_\_\_," recorded at said Registry in Plan Book \_\_\_\_\_, Page \_\_\_\_\_. [or add Land Ct. references as applicable].

"coastal bank" shall mean the seaward face or side of any elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland.

"coastal dune" shall mean any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash, including without limitation vegetated areas of American beach grass or other natural beach plants serving to build dunes in dune fields between the landward edge of unvegetated sand and the seaward face or side of the coastal bank. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.

**<ADDRESS>, Nantucket, Massachusetts**

“Easement Area” shall mean that part or portion of Grantors’ Land lying inland of the mean low water line up to and including: (i) the point of lowest elevation of the coastal bank, or (ii) any coastal dunes to the point where such coastal dunes terminate and the remainder of Grantors’ Land begins, as the case may be, and as the mean low water line, the coastal bank and the coastal dunes may exist from time to time. To the extent that erosion, accretion, drifting sand, avulsion or other natural phenomena alter the mean low water line, the coastal bank or the coastal dune, the Easement Area shall be deemed correspondingly altered for purposes of this Grant of Easement. A sketch of the Easement Area as it presently exists is attached hereto as Exhibit A and incorporated herein by attachment and reference.

“Coastal Conservation Land” shall mean that ocean-front land, contiguous to Grantors’ Land, now or hereafter owned by the Town or by the Nantucket Islands Land Bank, a government body established for the purpose of land conservation (see, Chapter 669 of the Massachusetts Acts of 1983, as amended), and held for the purpose of preserving the unique natural littoral environment of Nantucket for enjoyment by the general public, and for protecting the scenic and ecological character of the Nantucket shore.

“Commercial Activities” shall mean the erection or use of any permanent or temporary stand, kiosk, cart, advertisement or other structure or fixture primarily for the purpose of manufacturing, selling, leasing or otherwise providing from that specific structure any good, product or service. For the purposes of this definition, use of any good, product or service that is: (1) purchased or delivered in a location outside the Easement Area, or (2) not normally considered or not reasonably considered as commercial or a business enterprise, shall not constitute a commercial activity. (By way of illustration only and without limitation, use of goods or services purchased, leased or otherwise acquired outside of the Easement Area for the purposes of swimming, fishing, snorkeling, scuba diving and kayaking shall not constitute a commercial activity.)

“conservation” and “recreation,” and all derivations therefrom, shall have the general meanings and uses given to those terms by Internal Revenue Code, Section 170(h), and the regulations promulgated thereunder.

“mean high water line” shall mean the line where the arithmetic mean of the high water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“mean low water line” shall mean the line where the arithmetic mean of the low water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

“intertidal areas” shall mean the area upland of the mean low water line and seaward of the mean high water line, subject to tidal action.

“Maintenance Obligation” shall mean the ongoing and continuous obligation and duty to adequately patrol, maintain and police (that is, supervise, clean, and maintain order, but not to be

required to provide regular patrolling by law enforcement officers) and periodically to inspect the Easement Area.

3. The Grantee and the general public shall have the right to enter upon and use the Easement Area exclusively for conservation and recreational purposes for which beaches are used on Nantucket (with the exception of the vehicular uses that are provided in paragraph 4), but not Commercial Activities. These purposes and uses include, by way of illustration and without limitation, educational uses, swimming, fishing, surfboarding, snorkeling, sunbathing, strolling, walking, hiking, wildlife observation, picnicking, scenic viewing, normal and usual beach recreational activities and games, and other similar or appropriate and reasonable recreational outdoor activities and uses as the Grantee shall determine from time to time, provided the said similar uses shall have been approved in writing by the Board of Selectmen of the Town of Nantucket and notice of such approval is duly published in a newspaper of general circulation in the Town of Nantucket. The Grantee shall have the right, by duly adopted rules, regulations and/or bylaws to regulate the hours, and the scope and nature of the permitted uses and activities in accordance with the Grantee's standard beach-management practices and regulations in effect for the beaches of Nantucket, and further the Grantee may grant special permits, from time to time, for such other uses and activities and for such extended hours as may be provided for by such duly adopted rules, regulations and/or bylaws. In adopting such rules, regulations and/or bylaws, and in issuing special permits pursuant thereto, the Grantee (together with any applicable departments or other divisions, boards, bodies, agencies, officials or agents of the Town) shall consider the reasonably foreseeable effects of such rules, regulations and/or bylaws and permits proposed to be issued upon the reasonable peaceful enjoyment of the Grantors' Land lying outside the Easement Area and upon the Easement Area. Notwithstanding the foregoing, no member of the general public shall have any right to enter upon, travel over or otherwise use those portions of the Easement Area consisting of coastal dunes except (1) to enter upon, travel over or otherwise use any coastal dune located within an access way providing access to and from the Easement Area, or (2) with the prior written consent of Grantor(s) or Grantor(s) heirs, executors, administrators, legal representatives, successors and/or assigns. Notwithstanding the foregoing, the Town shall have the right to enter upon, travel over or otherwise use those portions of the Easement Area consisting of coastal dunes as necessary to perform its Maintenance Obligation.

4. In addition to the uses and activities set forth in paragraph 3 above, the Grantee may allow access and use of certain recreational vehicles in the intertidal areas of the Easement Area (as such intertidal areas exist from time to time at and after the date of the Grant of Easement provided hereby), but in no event shall such vehicular use be allowed in, on or over the dunes and dune fields or other environmentally sensitive areas (as identified by the Grantee) lying landward of the said intertidal areas, and all such vehicular access shall be limited solely to those accesses expressly designated and authorized by the Grantee. The vehicular access and use shall be subject to such other rules, regulations and bylaws now existing or hereafter adopted by the Grantee, including, but not limited to the issuance of permits for beach access and driving, provided however, during the period from June 1, through and including September 15, the hours of vehicular use and access shall be limited to between 5 P.M. and 10 P.M. or to such other dates and evening hours that the Grantee may duly authorize from time to time. The foregoing sentences shall not limit the official use of vehicles of the Town, its agencies or other governmental entities.

5. Notwithstanding the provisions of paragraphs 3 and 4 above, all movable or fixed structures (other than wooden steps to ascend the coastal bank) shall be prohibited throughout the Easement Area.

6. In addition to any other duties and obligations, the Town shall have the ongoing and continuous obligation and duty to fulfill its Maintenance Obligation. Any member(s) of the public who violate(s) the duly adopted rules, regulations and/or bylaws or who refuse to cease and desist from any proscribed conduct, acts or omissions to do or perform anything required to conform to the same may be cited in accordance with said rules, regulations and/or bylaws. The Town may remove from the Easement Area any individual who violates any said rule, regulation and/or bylaw. Further, when issuing any permits pursuant to such rules, regulations and/or bylaws, the Town shall impose such reasonable conditions and restrictions that may be reasonably necessary to assure the Grantor(s) the reasonable peaceful enjoyment of Grantors' Land lying outside the Easement Area.

7. This Grant of Easement shall be binding upon and inure to the benefit of the Grantor(s) and his/her/their heirs, executors, administrators, legal representatives, successors and assigns and this Grant of Easement shall be binding upon and inure to the benefit of the Grantee, and the Town and its successors and assigns. The Town's successors and assigns shall be entities eligible to hold qualified conservation restrictions under applicable federal tax law.

8. This Grant of Easement shall be subject to and interpreted pursuant to the laws of the Commonwealth of Massachusetts, and, to the extent applicable to shorefront property, also subject to the laws of the United States of America.

9. Rights retained by the Grantor(s) in and to the Easement Area shall be inferior and incidental to the conservation and recreational use of the Easement Area provided for here, and shall be valid to the extent consistent with this Grant of Easement, and only if exercised so as not to impair the conservation and recreational rights and interests conveyed to the Town hereunder. Said granted and retained rights shall exclude the right to physically alter the Easement Area, by any manual or mechanical means, in any way that would diminish the conservation and recreational purposes of this Grant of Easement. The Grantor(s) shall have the right to enforce the terms, conditions and provisions hereof by an action in equity brought in the Nantucket Superior Court of the Commonwealth of Massachusetts, and in no other courts or jurisdictions. The Grantor(s) hereby agree(s) that no such action shall be commenced unless and until the Grantor(s) shall have given thirty days written notice to the Town, itemizing and detailing with particularity the alleged acts or omissions of the Town deemed to be in material violation of the terms, conditions and/or provisions hereof. In the event that the Town shall have substantially cured such material violations and has taken reasonable measures to assure that uncurable violations shall be avoided in the future, no such actions shall be commenced. However, in no event shall the Town be liable for any monetary damages based upon a violation (material or otherwise) hereof.

10. The Grantee has represented to the undersigned Grantor(s) that the Town has taken or shall promptly take all lawful measures for the Town to accept this Grant of Easement on behalf of itself and the Grantee and to undertake the Maintenance Obligation provided for herein. Grantor(s) represent(s) that he/she/they are the rightful lawful owners of the Grantors'

Land and the Easement Area and that he/she/they possess the legal authority to grant the rights in real property conveyed to Grantee under this Grant of Easement.

11. No term, covenant or provision of this Grant of Easement, nor the granting or acceptance hereof, shall be construed to be a waiver or release by Grantee or the Town of any right, title or interest it may hold relative to the Easement Area, any permanently submerged land, any coastal dune, any coastal bank or any other land affected by this Grant of Easement.

12. It is the intention of the parties that this Grant of Easement will be perpetual and permanent in duration. It is granted and accepted with the intent of integrating the Easement Area with the Coastal Conservation Land to further protect the unique, natural scenic and ecological features of the Coastal Conservation Land, and in furtherance of numerous public policies favoring public access and recreational and conservation use of shorelines and beaches on Nantucket. If for any reason this Grant of Easement shall be deemed an easement in gross or otherwise subject to sunset provisions or other principles requiring duration less than perpetual, the rights granted hereunder shall be deemed to be appurtenant to and to run with the Town's or the Land Bank's title to ocean-front land contiguous to the Easement Area, which land may be identified in Exhibit B, if any, attached hereto

13. The Grantor(s) shall be absolved from liability claims arising from accidents or injuries occurring to users of the Easement Area in accordance with the provisions of Massachusetts General Law Chapter 21, Section 17C.

14. The Grantor(s) and the Town shall not use the Easement Area in any manner detrimental to the Easement Area or inconsistent with the purposes of this Grant of Easement.

[Signatures Follow On Next Page]

In witness whereof, the undersigned Grantor(s), intending to be legally bound hereby, has/have affixed his/her/their hand(s) and seal(s) this \_\_\_\_\_ day of \_\_\_\_\_.

**GRANTOR(S)**

\_\_\_\_\_

\_\_\_\_\_

Commonwealth of Massachusetts  
Nantucket County, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the person(s) whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

Commonwealth of Massachusetts  
Nantucket County, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the person(s) whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

ACCEPTANCE BY THE TOWN OF NANTUCKET

The undersigned, constituting a majority of the Town of Nantucket Board of Selectmen, hereby acknowledge that at a meeting of the Board of Selectmen held on <date>, the forgoing Grant of Easement was accepted pursuant to the authority of <Article \_\_\_\_ of the Annual or Special> Town Meeting held <date>> or <Section 2.1 and 3.3 of Chapter 289 of the 1996 Acts of the General Court, pursuant to which we have directed publication of notice regarding this acceptance>.

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\_\_\_\_\_  
\_\_\_\_\_

Commonwealth of Massachusetts

Nantucket County \_\_\_\_\_, 2007

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_

\_\_\_\_\_

who constitute a majority of the Board of Selectmen of the Town of Nantucket, and proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily as the Board of Selectmen of the Town of Nantucket for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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